SINGAPORE REPORTS

BANK OF CHINA v. MARIA CHIA SOOK LAN;* MARIA CHIA SOOK LAN v. BANK OF CHINA

[O.C.J. (Tan Ah Tah J.) March 27, 28, 29, 30; April 4, 5, 6, 7, 10, 12, 13, 14, 17, 19, 21; July 6, 1972]
[Singapore — Suits Nos. 1809 and 1909 of 1967]

Banking — Guarantee — 3 Guarantees given by defendant to bank in respect of her husband's indebtedness to bank — Claim by defendant that confirmation of deposit of her title deeds by way of equitable mortgage to secure her husband's indebtedness be set aside and bank restrained from selling defendant's land — Allegation of misrepresentation, undue influence, duress and fraud — Lack of independent advice as to effect of documents — Non est factum — Equitable mortgage by deposit of title deeds — Effect of non-registration of confirmation of deposit containing undertaking to execute legal mortgage — Registration of Deeds Ordinance (Cap. 255) — Evidence Act (Cap. 5) — Estoppel — Fraud — Solicitor's authority to bind client — Stamp Act (Cap. 147).

Land Law — Mortgage — Equitable mortgage by deposit of title deeds — Effect of non-registration of confirmation of deposit with bank containing undertaking to execute legal mortgage — Restraining bank from selling defendant's land — Registration of Deeds Ordinance (Cap. 255).

Contract — Lack of independent advice as to effect of documents — Non est factum — Mistake — Whether contract concluded.

Practice and Procedure — Two actions heard together although not consolidated — Setting aside consent orders.

C was a customer of *B* and had deposited title deeds to her real property at Cuscaden Road ("Cuscaden") with *B*, initially with no evidence of purpose of deposit. *C* had also deposited share certificates to secure her own account. Later *C's* husband, *Y*, opened an account with *B*, and *C* signed a confirmation of deposit of the title deeds to Cuscaden stating that they had been deposited to secure *Y's* indebtedness to *B*, and containing an undertaking to execute a legal mortgage on demand. At the same time, *C* gave *B* a guarantee of *Y's* account. *C* subsequently gave *B* 2 further guarantees to secure *Y's* account. *C* had also deposited with *B* title deeds to her land at Thomson Rise ("Thomson") to secure her own account, supported by a written confirmation of deposit. *B* called in the overdrafts of *C* and *Y*. *Y* defaulted and was made bankrupt on the petition of another creditor. Agreement was made between *B* and *C* through their respective solicitors whereby *C's* shares and Thomson should be sold first, and if proceeds proved insufficient to discharge the obligations of *C* and *Y* to *B*, the balance would be paid by instalments to be agreed between *B* and *C*, and only if *C* defaulted in paying the instalments would Cuscaden, (the matrimonial home), be sold. Consent orders of court were obtained pursuant to the agreement, declaring *B* entitled as mortgagee to Cuscaden and Thomson and enabling *B* to sell the properties. *C* alleged she signed first guarantee through undue influence and/or duress, that she had no independent advice, and that the true nature of the guarantee was concealed from her, but abandoned these defences on the first guarantee before trial. *C* alleged misrepresentation as to second guarantee, and undue influence and duress as to third guarantee, and *non est factum*, misrepresentation, fraudulent misrepresentation, duress and/or undue influence concerning the first confirmation of deposit, that the arrangement arrived at between her solicitors and *B's* solicitors whereby Thomson and her shares would be sold before Cuscaden was not a concluded agreement because the amount of the instalments was left open, and the orders made had no greater validity than the purported agreement on which they were based, that she never authorised her solicitors to come to such arrangement nor to consent to either of the orders of court, and was unaware that such orders were being made, and they should be set aside. *C* further contended that the confirmations of deposit evidencing the equitable mortgages were inadmissible and the mortgages unenforceable for non-registration under section 4 Registration of Deeds Ordinance (Cap. 255) and that oral evidence of the intention to create an equitable security could not be given by reason of section 91 Evidence Act (Cap. 5). It was further alleged by *C* that because no sum was mentioned in the confirmation of deposit, and it was not stamped, it was void for uncertainty. Alternatively, it was valid only to secure $100,000 being the amount of *Y's* authorised overdraft according to an entry in *B's* books. *B* raised an estoppel against *C* on the basis *C* had represented by inaction or silence that the consent orders were effective and binding.

Held: (1) there was no acceptable evidence of fraudulent or innocent misrepresentation, duress or undue influence, *non est factum* or want of authority on the part of *C's* solicitors, nor of need for independent advice, and accordingly, *C* failed on these pleas;

(2) applying *The Ho Hong Bank Ltd.* v. *Teo Chin Chay*,[5] the confirmation of deposit relating to Cuscaden did not create the equitable mortgage but merely stated the terms of a pre-existing contract and therefore was not inadmissible for want of registration under section 4 Registration of Deeds Ordinance.

(3) the confirmation of deposit was not void for uncertainty or unenforceable, as, if it was liable to stamp duty under the Stamp Act, it could be stamped as necessary to cover advances made from time to time;

(4) the confirmation of deposit was not enforceable only for $100,000 as, according to its tenor, the security evidenced thereby was for all monies owing or which should at any time thereafter be owing by *Y*;

(5) the agreement made by *B* and *C* through their respective solicitors was not unconcluded;

(6) applying *Huddersfield Banking Co. Ltd.* v. *Henry Lister & Sons Ltd.*,[7] there was no ground on which the consent orders could be set aside.

Obiter: (1) even if *C's* solicitor had not been instructed to consent to the orders, he had implied authority to do so in the absence of instructions to the contrary. (*S.N. Mitra* v. *S.J. Dasi*[6]);

(2) even if *C's* evidence should have been accepted, she was estopped from relying on her allegations against *B*.

Cases referred to:-

(1) *Howes* v. *Bishop* [1909] 2 K.B. 390.
(2) *Bank of Montreal* v. *Stuart* [1911] A.C. 120.
(3) *Cox* v. *Adams* (1904) 35 Can. S.C.R. 393.
(4) *Saunders* v. *Anglia Building Society* [1970] 3 All E.R. 961.
(5) *Ho Hong Bank Ltd.* v. *Teo Chin Chay* [1929] S.S.L.R. 195.
(6) *S.N. Mitra* v. *S.T. Dasi* (1930) 46 T.L.R. 191.
(7) *Huddersfield Banking Co. Ltd.* v. *Henry Lister & Son Ltd.* [1895] 2 Ch. 273.
(8) *Maclaine* v. *Gatty* [1921] 1 A.C. 376.

The following authorities were also cited in argument: *Scammell* v. *Ouston* [1941] 1 All E.R. 14; *Kasmeerah* v. *Hadjee Mohamed Taib* (1901) 6 S.S.L.R. 104; (1904) 8 S.S.L.R. 113 Court of Appeal; *Samy Nathan Chetty* v. *Ramasamy Chetty* (1904) 8 S.S.L.R. 117; *Re M.D. Mistry* (1904) 8 S.S.L.R. 122; *A.R.A.R.M. Ramanathan Chettiar* v. *Chua Tiang Seng* [1933] 2 M.L.J. 69; *Neve* v. *Pennell* 71 E.R. 427; *Doe d. Scrutton* v. *Snaith* 131 E.R. 356; *Deane* v. *Hagan* [1961] 3 All E.R. 380; *Morgan* v. *Pike* 139 E.R. 195; *In re Coolgardie Goldfields Limited* [1900] 1 Ch. 475; *In re Lloyd's Bank Limited* [1931] 1 Ch. 289; *Crears* v. *Hunter* (1887) 19 Q.B.D. 341 C.A.; *Neale* v. *Lennox* [1902] 1 K.B. 838, and (1902) A.C. 465; *Re a Debtor* [1914] 2 K.B. 758; *Shepherd* v. *Robinson* [1919] 1 K.B. 474; *Bell* v. *Lever Bros.* (1932) A.C. 161; *Hopgood* v. *Brown* [1955] 1 All E.R. 550; *Savage* v. *Foster* (1723) 9 Mod. Rep. 35.

ACTIONS

A. P. Godwin and *Roy Sharma* for Bank of China.

K. E. Hilborne for Madam Chia.

Tan Ah Tah J.: In these proceedings two actions, *viz.* Suit No. 1809 of 1967 and Suit No. 1909 of 1967 were virtually heard together although no order for

* We are grateful to Mr. A. P. Godwin for his assistance in the preparation of this report and the report at p. 49, C.A. The Court of Appeal decision has been upheld by the Privy Council (to be reported).

the consolidation of the actions had been made. It was agreed by counsel for both parties that the evidence given in one action should be admissible in the other action.

In Suit No. 1809 of 1967 the Bank of China (hereinafter referred to as "the Bank") sued Madam Maria Chia Sook Lan (hereinafter referred to as "the defendant") for the amount due on three Letters of Guarantee, the particulars of which are set out as follows, together with interest thereon: —

Letter of Guarantee dated October 2, 1961 $100,000

Letter of Guarantee dated January 12, 1962 $200,000

Letter of Guarantee dated January 27, 1965 $600,000

The principal sum of $100,000 under the Letter of Guarantee dated October 2, 1961 was paid by the defendant to the Bank before the trial commenced. What has to be decided in Suit No. 1809 of 1967 is therefore whether the Bank is entitled to payment from the defendant of the principal sums of $200,000 and $600,000 and interest thereon under the Letters of Guarantee dated January 12, 1962 and January 27, 1965 respectively.

In Suit No. 1909 of 1967 the defendant is the plaintiff while the Bank are the defendants. The facts alleged by the defendant in this action may be summarized as follows. The defendant is the owner of the land and dwelling house erected thereon known as No. 28, Cuscaden Road. On or about the August 15, 1961 the defendant deposited the title deeds of the said immovable property with the Bank as security for an overdraft on the defendant's personal account with the Bank. The defendant's husband Yo Kian Tjoan (hereinafter referred to as "Yo") was the sole proprietor of a firm carrying on business under the name of Dwidaya Trading Company. On a certain date in what the defendant believes to be the year 1961, on the representation of a Mr. Loke, an employee of the Bank, that the same were documents the required signatures to which were a mere formality, Yo obtained from the defendant at the matrimonial home her signatures to two printed blank documents one of which the defendant and Yo learnt early in the year 1966 was a Confirmation of deposit of the title deeds relating to the said immovable property to secure Dwidaya Trading Company's account with the Bank of all monies then owing or which should thereafter be owing, the other document being a guarantee to the Bank in the sum of $100,000 on Dwidaya Trading Company's account. Both documents were dated October 2, 1961. Alternatively, Yo was aware of the true nature of the said Confirmation of deposit of title deeds and the purpose for which the defendant's signature to the same was required, notwithstanding which the Bank through the said Loke by threats, intimidation and/or undue influence procured him to exercise his will, dominion and influence over the defendant in order to induce her to sign the said document. The Bank or alternatively the Bank and Yo wrongfully concealed from the defendant the true purpose for which they required her signature to the said Confirmation of deposit of title deeds, namely, for the purpose of obtaining a deposit by way of equitable mortgage of the title deeds of the said immovable property as security for the overdraft of the said Dwidaya Trading Company and fraudulently misrepresented to her the true nature of the transaction. Furthermore, the Bank knew that the defendant had no independent advice with regard to the said documents and received no consideration whatsoever thereunder. Without the knowledge or consent of the defendant the Bank in Originating Summons No. 185 of 1966 obtained an order to sell the said immovable property out of court by private treaty or by public auction and to be at liberty to execute as mortgagee a proper conveyance to the purchaser of the said immovable property as a result of Dwidaya Trading Company's failure to repay its debt to the Bank. The said order in Originating Summons No. 185 of 1966 was obtained on September 12, 1966 with the consent of Mr. Selvadurai who was then acting as solicitor for the defendant. The defendant did not give her consent to the making of the said order nor did she authorise Mr. Selvadurai or any other person to give such consent. Further, the consent of the defendant's counsel to the said order being made was given on the assumption that an agreement between the defendant and the Bank had been reached regarding, *inter alia*, the sale of the defendant's property known as Lot 882 Mukim XVIII being land at Thomson Rise and the postponement of the sale of 28, Cuscaden Road. The defendant alleges that in fact no concluded agreement was reached between the parties by reason whereof the said consent was wrongly given. Alternatively, if a concluded agreement between the parties was reached, it was a condition thereof that no steps be taken by the Bank to sell 28, Cuscaden Road until after the sale of the said Lot 882 Mukim XVIII which property has not hitherto been sold by reason whereof the Bank is not entitled to sell 28, Cuscaden Road. The Bank in the proceedings in Originating Summons No. 185 of 1966 concealed from the court the fact which was well within the Bank's knowledge that the title deeds of 28, Cuscaden Road were deposited with the Bank on or about the August 15, 1961 to secure the defendant's personal overdraft. Further, or in the alternative the said Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable property comprised therein which is void and unenforceable by the Bank against the defendant for the following reasons, first, that by virtue of section 4 of the Registration of Deeds Ordinance (Cap. 255) it is not admissible in evidence in these proceedings, nor was it admissible in evidence in the proceedings in Originating Summons No. 185 of 1966 on the ground that it was not registered under that Ordinance, and secondly, that the amount secured under and by virtue of the said equitable mortgage is not provided for in that the same is not stated therein nor is the same stamped under the provisions of the Stamp Ordinance (Cap. 170) so as to make the said amount capable of ascertainment, and the same is therefore void for uncertainty. Further, or in the alternative, if the said Confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of $100,000 with such interest thereon, if any, as may properly be found to be due thereon.

Those being the facts alleged in Suit No. 1909 of 1967, the defendant claims a declaration that the Con-

firmation of deposit of the title deeds relating to the land and house known as 28, Cuscaden Road to secure the overdraft of Dwidaya Trading Company is not the defendant's document. Alternatively, the defendant claims a declaration that the said Confirmation of deposit of title deeds being deposited with the Bank in fraud of the defendant is voidable as against her and she asks for an order that the said Confirmation of deposit of title deeds be set aside. Alternatively, the defendant claims a declaration that the said Confirmation of deposit of title deeds is invalid and unenforceable against her, or in the further alternative, a declaration that the same is enforceable against her for a sum of not more than $100,000 with such interest thereon, if any, as may properly be found to be due thereon. The defendant asks that the order made on September 12, 1966 in Originating Summons No. 185 of 1966 be set aside and for an injunction to restrain the Bank from selling or otherwise disposing of the land and house known as 28, Cuscaden Road. Finally, she claims a declaration that she is entitled to the said immovable property discharged from the claim under the said mortgage.

It is submitted by counsel for the defendant that in no proper sense can the defendant be described as a businesswoman or a person with business acumen or having a knowledge of business affairs. In considering this submission, it should be remembered that the defendant herself gave evidence that she managed her own dress-making business which had eight to ten employees for about fifteen years in Djakarta. She also stated that apart from dealing in jewellery on a small scale she did not deal in other goods. However, in her statement made to the Official Assignee's department which was recorded by Mr. Low Sim Chan, the chief interpreter in that department, the following words appear:—

"During the Japanese occupation, I was a broker in all sorts of things and made much money. After the Japanese occupation both my husband and I travelled to and from Indonesia and Singapore doing business. I had also made much money in this way. In those days I was like a travelling trader. I brought goods from Indonesia to Singapore and took back goods from Singapore to Indonesia."

I accept the defendant's statement as recorded by Mr. Low Sim Chan as a correct account of her business activities during and after the Japanese occupation. To all that has been stated must be added her dealings in the share market in Singapore which were obviously on a large scale. The plight in which the defendant and Yo found themselves in and after 1964 was entirely or almost entirely due to the policy of Indonesia known as confrontation and not to any lack of business acumen. In my opinion the defendant is a shrewd woman with considerable business ability.

It has been contended on behalf of the defendant that she had difficulty in communicating with solicitors and bank officials. The evidence shows that her mother tongue was Hakka and that she was also fluent in Mandarin. She had some knowledge of English and Malay and could also converse in these two languages. There were occasions when she spoke in a mixture of two languages. Three solicitors have given evidence that each of them conversed with the defendant in a mixture of English and Malay. These three solicitors are Mr. Tann Wee Tiong, Mr. P. Selvadurai and Mr. R. E. Redrup. Each of these solicitors has given evidence to the effect that the defendant understood what they said to her and that they understood what she said to them. Mr. Selvadurai has stated that when the defendant and Yo first came to his office he sent for his managing clerk Mr. Ng Ling Cheow as he thought that it might be necessary to communicate with the defendant and Yo through an interpreter. However, it soon became apparent that there was no need for an interpreter and Mr. Ng Ling Cheow left the office after five or ten minutes. According to Mr. Selvadurai, there was no difficulty as far as language was concerned. He stated that the defendant's English was not strictly grammatical English but it was clearly understandable; there was no difficulty whatsoever. Mr. Selvadurai added that he had dealt with many Chinese clients whose standard of English was similar to that of the defendant. It is true that Mrs. Collins, who gave the defendant lessons in English conversation in or about 1960, stated that the defendant's standard of English was very poor and that her progress was also very poor. However, what is relevant in this case is whether she was able to communicate with other people in the English language and not whether she spoke good, grammatical English. I accept the evidence of Mr. Tann Wee Tiong, Mr. Selvadurai and Mr. Redrup that they were able to converse directly with the defendant by using a mixture of English and Malay without the aid of an interpreter and that what was said was understood. In my view the defendant was not being truthful when she said that she spoke in Mandarin through an interpreter when she was in Mr. Selvadurai's office.

One of the witnesses called on behalf of the Bank was Mr. Loke, who has been referred to as an employee of the Bank. He was in fact a sub-manager at the Bank and there were two other sub-managers called Mr. Djeng and Mr. Chang. All these three sub-managers shared one room in the Bank.

Mr. Loke's evidence relating to the opening of the accounts of the defendant and of Dwidaya Trading Company and the signing of the documents by the defendant may be summarized as follows. In November 1960 the defendant and Yo saw Mr. Loke and Mr. Djeng in their room at the Bank. The defendant informed Mr. Loke that she wanted to open an account with the Bank and to deposit some shares to secure an overdraft. Mr. Loke spoke in English and Malay to the defendant. He did not speak Mandarin but could understand a little of that language. The defendant spoke to Mr. Loke in Malay and Mandarin. Mr. Djeng was fluent in English and Mandarin. There was no difficulty in communicating with the defendant.

A few days later, after Mr. Loke had spoken to Mr. Lu, the manager of the Bank, the defendant and Yo came to the Bank and were informed by Mr. Loke that the Bank was prepared to give the defendant overdraft facilities if she deposited her shares with the Bank. The defendant opened an account with the Bank on November 10, 1960 by depositing the sum of $500. She drew out the sum of $40,000 on the same day after having deposited shares worth about $80,000 as security.

On the invitation of Mr. Loke, Yo opened an account with the Bank on February 2, 1961 in the name of Dwidaya Trading Company of which he was the sole proprietor.

Early in October 1961 Yo applied for overdraft facilities to be provided for Dwidaya Trading Company. It was arranged that the defendant should sign a letter of guarantee and also deposit the title deeds of her property 28, Cuscaden Road with the Bank to secure the account of Dwidaya Trading Company. The Bank's records (page 7 of AB1) show that the deposit of the title deeds to secure the firm's account was entered in the records on October 1, 1961, the limit of the overdraft then approved being $100,000.

On October 2, 1961 the defendant and Yo came to Mr. Loke's room where Mr. Djeng explained the contents of the letter of guarantee for $100,000 and the Confirmation of deposit of title deeds to the defendant in Mandarin. The relevant details had all been typed in the two printed forms. It is convenient at this stage to mention that Mr. Djeng also said in the course of his evidence that the relevant details had all been typed in the two printed forms and that he explained the contents of the two documents to the defendant in Mandarin. Mr. Djeng said that the defendant fully understood the contents of both documents before she signed them. Both Mr. Loke and Mr. Djeng said that both documents were signed by the Defendant in their room in the Bank and in their presence. Mr. Loke added that Yo signed both documents as a witness.

It should be mentioned at this stage that according to Yo the letter of guarantee dated October 2, 1961 was handed to him as a blank printed form by Mr. Loke. Yo took it home and persuaded the defendant to sign it. He then signed the document as a witness and returned it to Mr. Loke.

I accept the evidence of Mr. Loke and Mr. Djeng that the letter of guarantee and Confirmation of deposit of title deeds were both signed by the defendant in their room in the Bank on October 2, 1961 and that the relevant details had been typed in the forms before they were signed. I also find as a fact that the contents of both documents were explained in Mandarin to the defendant by Mr. Djeng before she signed them.

To resume the summary of Mr. Loke's evidence, the next document to be considered is the letter of guarantee bearing the date January 12, 1962. Yo had ordered machinery from abroad in connection with his business in Malaysia for which he was unable to pay. He therefore wanted to use trust receipts signed by him in the Bank's favour in order to take delivery of the machinery. It was accordingly arranged that the defendant should sign a letter of guarantee, whereby she would guarantee the payment by Dwidaya Trading Company of their indebtedness to the Bank to the extent of $200,000.

A letter of guarantee was accordingly prepared. The defendant and Yo came to see Mr. Loke at the Bank on January 12, 1962. The relevant details had been typed in the printed form. Mr. Djeng explained the contents of the document to the defendant in Mandarin. At this stage it should be mentioned that Mr. Djeng said that in the course of his explanation of the contents of the document to the defendant he also explained to her what a trust receipt was. Both Mr. Loke and Mr. Djeng said that the letter of guarantee was signed by the defendant on January 12, 1962 in their room in the Bank and in their presence. Mr. Loke signed the document as a witness after the defendant had signed it.

According to Yo's evidence he did not require facilities relating to trust receipts from the Bank in January 1962. He only needed them towards the end of 1962 or the beginning of 1963. He therefore alleged that the letter of guarantee had been back-dated, and that the date January 12, 1962 was actually written in 1963 or 1964. The defendant's version regarding this document is that on one occasion in 1962 Yo spoke on the telephone to her and asked her to go to his office which was then in the Bank of China building. He explained that the first document which both of them alleged was signed by the defendant in their home was of no use and that she had to sign another document in his office. She accordingly went to his office where she saw him and Loke together. Yo then handed her the document and she signed it. She identified her signature on the letter of guarantee dated January 12, 1962.

I accept the evidence of Mr. Loke and Mr. Djeng that the letter of guarantee was in fact signed by the defendant on January 1962 in their room in the Bank and that the relevant details had been typed in the printed form before it was signed. I find that the document was a letter of guarantee in respect of trust receipts and that Mr. Djeng had explained its contents to the defendant who knew and understood what she was signing. I reject Yo's allegation that the document had been back-dated. I do not believe the defendant's statement that she signed the document because she had been told that the first document had been found to be defective in form and that she signed it in Yo's office.

Resuming the summary of Mr. Loke's evidence, the next document to be considered is the letter of guarantee dated January 27, 1965. As Dwidaya Trading Company's overdraft had exceeded $1,000,000 in January 1965 Mr. Lu, the manager of the Bank, requested Mr. Loke to obtain a further guarantee of $600,000. On January 27, 1965 at Mr. Loke's request the defendant and Yo came to Mr. Loke's office where Mr. Loke told them in the presence of Mr. Djeng that if the further guarantee was not given the matter would be placed in the hands of the Bank's solicitors. Mr. Loke also explained that if the Bank's request was not complied with, bankruptcy proceedings would have to be taken against Dwidaya Trading Company which would result in Yo being made bankrupt and the defendant's shares would have to be sold. The defendant was very reluctant to sign the letter of guarantee but after the matter had been discussed for about half an hour she agreed to sign the document. The contents of the document were explained to her by Mr. Djeng in Mandarin. The document was then signed by the defendant and Mr.

Loke wrote his initial on it as a witness. It may be added at this stage that Mr. Djeng gave evidence which was very similar to Mr. Loke's description of what took place in the office, except that Mr. Djeng said the discussion lasted from 20 to 30 minutes.

The defendant's version of the incident is that she was threatened and intimidated by Mr. Loke and Mr. Djeng and argued with them for about three hours until they finally forced her to sign the guarantee. It is contended on behalf of the Defendant that she was subjected to undue influence and that her signature to the document was obtained as the result of pressure, threats and intimidation on the part of Mr. Loke and Mr. Djeng. During the trial Yo's passport was produced and it showed that he was away from Singapore from January 26, 1965 to February 1, 1965. It was clear therefore that Yo could not have been present if the document was signed by the defendant on January 27, 1965.

Another point put forward on behalf of the defendant is that as a result of an amendment to the law in Malaysia relating to foreign banks, the Bank was given notice in February 1965 to cease business in August 1965. It will be remembered that Singapore at that time was part of Malaysia. It is argued that the prospect of having to close down in August 1965 gave the officials of the Bank an added impetus to take action in cases where accounts had been overdrawn.

In my view both Mr. Loke and Mr. Djeng had a lapse of memory when they said that Yo was present in their room on January 27, 1965. They had been accustomed to seeing both the defendant and Yo together when documents were signed by the defendant. Despite this lapse of memory on their part, I regard Mr. Loke and Mr. Djeng as honest witnesses. I find that the discussion which resulted in the signature by the defendant of the letter of guarantee on January 27, 1965 lasted about half an hour and not three hours as she claimed it did. I find as a fact that because of the large amount by which Dwidaya Trading Company's account was overdrawn, both Mr. Loke and Mr. Djeng informed the defendant of the necessity of having a further guarantee and explained to her what legal steps the Bank would have to take if the further guarantee was not provided. In my opinion Mr. Loke and Mr. Djeng did not exercise undue influence over the defendant nor did they use pressure threats or intimidation to make her sign the letter of guarantee.

It is contended on behalf of the defendant that in any event there was no consideration for the letter of guarantee dated January 27, 1965. On this point it is sufficient to say that the consideration for this letter of guarantee was the agreement by the Bank to allow Dwidaya Trading Company to continue to operate their overdrawn account and the forbearance by the Bank to sell the defendant's shares and to take bankruptcy proceedings against Yo.

Counsel for the defendant also submitted that on the facts of this case it had been proved that Yo had exercised undue influence over the defendant. On the question of the exercise of undue influence by a husband over his wife the following passage from the headnote in *Howes* v *Bishop*[1] is relevant: —

> "*Per* Lord Alverstone C.J. and Fletcher Moulton L.J.: There is no general rule of universal application that the rule of equity as to confidential relationships necessarily applies to the relation of husband and wife, so as to throw on the husband, or on the person who is suing the wife, the onus of disproving an allegation of undue influence."

In *Bank of Montreal* v *Stuart*[2] the Privy Council considered the case of *Cox* v *Adams*[3] heard by the Supreme Court of Canada, which decided, or was supposed to have decided, that no transaction between husband and wife for the benefit of the husband can be upheld unless the wife is shown to have had independent advice. This decision in *Cox* v *Adams* was disapproved by the Privy Council.

In my opinion there is no general rule of law or equity which places upon the Bank the onus of disproving the allegation made by the defendant that Yo had exercised undue influence over her. Even if there were such a general rule the evidence in this case does not show that Yo exercised undue influence over the defendant. As I have stated, the defendant is a shrewd woman with considerable business ability. Her experience in the world of business commenced soon after her marriage to Yo in 1942 when she started her dressmaking business. I find as a fact that neither Yo nor Mr. Loke nor Mr. Djeng nor any other bank official exercised undue influence over her in respect of any of the transactions or documents in this case.

On the question of independent advice the defendant's experience and business ability was such that in my view she did not need independent advice. If she thought she needed independent advice she could have easily obtained it. Neither Mr. Loke nor Mr. Djeng would, in my view, have raised any objection if the defendant had said she wanted to consult someone, for example, a solicitor before signing any of the documents in this case. There is, however, no evidence that she wished to consult a solicitor or any other person.

I find that there was never any connivance or conspiracy between Yo and any of the Bank's officials to induce the defendant to sign the relevant documents in this case.

In my opinion the Bank cannot be said to have been guilty of fraud in respect of any of the transactions between the Bank and the defendant or between the Bank and Yo. The defendant has failed to prove the allegation of fraud made by her against the Bank. The transactions and documents which have been referred to were explained to her and she fully understood what she was doing.

As to the plea of *non est factum* put forward on behalf of the defendant, this plea must fail because in my view there was no misunderstanding, least of all a fundamental misunderstanding, on the part of the defendant as to either the character of the documents or the contents of the documents signed by her. The case of *Saunders* v *Anglia Building Society*[4] which defines and explains in detail the plea of *non est factum*, does not assist the defendant's case.

The evidence given by Mr. Loke and Mr. Djeng regarding the deposit of the title deeds relating to 28,

Cuscaden Road has been subjected to criticism by counsel for the defendant. Mr. Loke said that he saw various letters including the letter dated August 11, 1961 which was sent by Messrs. Allen & Glenhill, who were acting for the defendant in the purchase of the property, to the Bank enclosing the title deeds. However, Mr. Loke did not seem to be very certain about the purpose for which the title deeds were sent to the Bank. On the other hand Mr. Djeng said it was Mr. Loke who told him in December 1960 that Yo had told Mr. Loke about his intention to ask for an overdraft on Dwidaya Trading Company's account. When Mr. Djeng saw a letter dated January 21, 1961 from Messrs. Allen & Gledhill undertaking to forward the conveyance relating to 28, Cuscaden Road to the Bank after the matter had been finalised, Mr. Djeng said that he knew the title deeds would be sent to the Bank to secure Yo's future overdraft. In considering the evidence on this point it should be noted that Mr. Djeng was in charge of the correspondence between the Bank and Messrs. Allen & Gledhill on the subject of the title deeds. Mr. Loke saw the correspondence because it was the practice of the Bank to send all in-coming and out-going letters for perusal by all the sub-managers; he was not personally in charge of the matter. In my view Mr. Loke forgot what Yo had told him in December 1960 and also forgot that he had mentioned the matter to Mr. Djeng. I accept the whole of Mr. Djeng's evidence regarding the title deeds.

I find as a fact that Yo saw Mr. Loke on or before October 1, 1961 and discussed the matter of an overdraft on Dwidaya Trading Company's account. It was arranged between them that the title deeds relating to 28, Cuscaden Road which were already in the possession of the Bank, should be treated as having been deposited as security for the overdraft. It was also arranged that the defendant should sign a letter of guarantee. During this discussion Yo was speaking for and on behalf of the defendant so far as the title deeds and letter of guarantee were concerned. No direct evidence was given as to whether Mr. Loke consulted Mr. Lu on the matter but it can be presumed that he would have done so. On October 1, 1961 an entry was made in the Bank's records (page 7 of AB1) setting out the particulars of the transaction, the limit of the overdraft then approved being $100,000.

On October 2, 1961 the defendant and Yo came to see Mr. Loke and Mr. Djeng. I have already found as a fact that the defendant signed both the letter of guarantee and Confirmation of deposit of title deeds in Mr. Loke's room on October 2, 1961. I am also satisfied and find as a fact that the Defendant understood the contents of both documents. There is in my view no truth in the allegation that Mr. Loke by threat, intimidation and/or undue influence procured Yo to exercise his will, dominion and influence over the defendant in order to induce her to sign the Confirmation of deposit of title deeds. Nor is there any truth in the allegation that the officials of the Bank or alternatively the said officials and Yo concealed from the defendant the purpose for which they required her signature to the document and fraudulently misrepresented to her the true nature of the transaction. It is in my opinion clear beyond any doubt whatsoever that the consideration for the equitable mortgage by way of deposit of title deeds was the granting of overdraft facilities to Dwidaya Trading Company.

It is contended by counsel for the defendant that the Confirmation of deposit of title deeds constituted an equitable mortgage of the immovable property comprised therein which is void and unenforceable by the Bank against the defendant because by virtue of section 4 of the Registration of Deeds Ordinance (Cap. 255) it is not admissible in evidence in these proceedings.

Before citing a case which is relevant to this argument I must set out the facts as found by me. The facts are that the equitable mortgage came into existence on or before October 1, 1961 when Yo, acting on behalf of the defendant, made the arrangements with Mr. Loke at the Bank. It should be remembered that the title deeds were already in the possession of the Bank, having been sent there by Messrs. Allen & Gledhill on August 11, 1961. It is also relevant to refer to the first six lines of the Confirmation of deposit of title deeds which was signed on October 2, 1961. These six lines read as follows: —

"I, the undersigned Maria Chia Sook Lan alias Tjhia Sioek Lan of No. 28, Cuscaden Road, Singapore, hereby confirm the terms of my verbal agreement previously made with you under which it was arranged that the title deeds relating to the undermentioned properties which were in your possession were to be held by you as security for the payment to you on demand of all moneys then owing or which should at any time thereafter be owing from Dwidaya Trading Co., of 12, Boat Quay, Singapore...."

The case which I shall not cite is *The Ho Hong Bank, Ltd.* v *Teo Chin Chay*[5] the relevant part of the headnote of which reads as follows: —

"The defendant deposited title deeds relating to land with the plaintiff Bank subject to an oral agreement that they should be held as security for future advances by the Bank and such advances were made. The defendant subsequently wrote to the Bank confirming that he had deposited the deeds as security for the advances, and undertook to execute a legal mortgage when called upon to do so. The letter was not registered as an 'assurance' under section 5 of Ordinance No. 148 (Registration of Deeds).

Held, following *Kasmerah* v. *Haji Mohamed Taib*, 8 S.S.L.R. 113, that, notwithstanding the wording of the letter, the agreement under which the deposit of title deeds had been made could be proved by parol evidence. The word 'assurance' in section 5(1) of Ordinance No. 148 (Registration of Deeds) does not include the act of depositing title deeds.

Saminathan v. *Ramasamy*, 8 S.S.L.R. 117, and *Re Mistry*, 8 S.S.L.R. 122, dissented from.

Held, further, that even if the letter came within the meaning of the word 'assurance', as used in section 5 of the Ordinance, it was not evidence of title to land, and, consequently the admissibility of the letter, as evidence, was not affected by the Ordinance.

An equitable mortgagee's rights are conferred by the deposit itself coupled with an intention to create a security. The subsequent letter did not create the equitable mortgage, but merely stated the terms of the contract."

It is clear that in the present case the Confirmation of deposit of title deeds did not create the equitable mortgage, but merely stated the terms of the contract. The very words of the Confirmation refer to a verbal agreement previously made under which the arrangement or contract was entered into. In my opinion the Confirmation was not rendered inadmissible by the provisions of section 4 of the Registration of Deeds Ordinance.

Another argument put forward on behalf of the defendant is that the equitable mortgage is void and unenforceable because the amount secured under and by virtue of the said equitable mortgage is not provided for in that the same is not stated therein nor is the document stamped under the provisions of the Stamp Ordinance (Cap. 170) so as to make the said amount capable of ascertainment. It is therefore argued that the document is void for uncertainty. Assuming for a moment in favour of the defendant that the document is a security within the meaning of section 28(2) of the Stamp Ordinance, ad valorem duty can always be paid on it accompanied by a penalty, if any, imposed by the Commissioner of Stamps. It is to be observed that under section 28(2) of the Stamp Ordinance advances or loans can continue to be made in excess of the amount covered by any stamp duty paid and the security shall for the purpose of stamp duty be deemed to be a new and separate instrument bearing date on the day on which the advance or loan is made. There is therefore no question of the document being void for uncertainty or unenforceable, whatever may be the stamp duty payable thereon.

It is further argued on behalf of the defendant that if the Confirmation of deposit of title deeds is valid and enforceable, then the same is security only for a sum of $100,000 with interest thereon, if any, as may properly be found to be due thereon. Reliance is placed on the fact that the records of the Bank show that the limit of the overdraft approved was $100,000. In this connection it must be pointed out that according to the verbal agreement referred to in the document the title deeds were to be held by the Bank as security for the payment on demand of all moneys then owing or which should at any time thereafter be owing from Dwidaya Trading Company. Increases in the overdraft had normally to be approved by Mr. Lu, the manager of the Bank, and there is evidence to show that he did agree to certain increases. The records of the Bank cannot be relied on to show the limit of the amount that can be claimed by the Bank from the defendant. There is no reason why increases in the overdraft cannot be approved by the manager even during a telephone conversation. The agreement between a bank and its customer is binding on the parties even though the records of the bank merely show the initial amount approved.

On November 19, 1963 the defendant signed another Confirmation of deposit of title deeds whereby she confirmed the terms of a verbal agreement made between her and the Bank under which it was arranged that the title deeds relating to the property at Thomson Rise were to be held by the Bank as security for her overdraft.

In March 1965 the Bank cancelled the overdraft facilities which had been given to the defendant and Dwidaya Trading Company and requested payment from them of the amounts due on the overdrafts. Correspondence ensued between the Bank on the one hand and the Defendant and Dwidaya Trading Company or Yo on the other hand. This correspondence went on until 1966. In May 1966 Mr. Tann Wee Tiong was instructed by the defendant and Dwidaya Trading Company to act for them. Mr. Tann Wee Tiong made certain offers on behalf of his clients which were not acceptable to the Bank.

On August 1, 1966 the Bank filed Originating Summons No. 185 of 1966 against the defendant. This was an application for, *inter alia*, a declaration that the Bank be considered to be a mortgagee of 28, Cuscaden Road and for an order that the said property be sold giving the right to the Bank to convey the property to the purchaser. The Originating Summons and accompanying affidavit were served on Mr. Tann Wee Tiong on August 4, 1966. On August 6, 1966 Mr. Tann Wee Tiong took the Originating Summons and affidavit to Yo's house where he explained the contents to Yo and the defendant. According to Mr. Tann Wee Tiong neither Yo nor the defendant complained about the behaviour of the Bank nor did the defendant complain about the behaviour of Yo. Mr. Tann Wee Tiong said that the defendant did not accuse Yo of cheating her nor did she cry or leave the room while he was there. This is in contrast to the defendant's version of the incident which was to the effect that she scolded Yo in the presence of Mr. Tann Wee Tiong and said Yo had cheated her. She also said that she went away to her room and wept. According to the defendant she first came to know that 28, Cuscaden Road was security for Dwidaya Trading Company's overdraft when Mr. Tann Wee Tiong explained the contents of the Originating Summons and affidavit to her. I accept the evidence of Mr. Tann Wee Tiong as to what happened at the interview between him and the defendant and Yo. I do not accept the version given by the defendant as in my opinion she was not telling the truth.

On August 10, 1966 the defendant and Yo went to see Mr. Selvadurai and asked him to act for them. They explained to him that 28, Cuscaden Road was their family home and they wanted to save it from being sold. After detailed instruction had been given to Mr. Selvadurai by the defendant and Yo, correspondence ensued between Messrs. Lee & Lee and Messrs. Donaldson & Burkinshaw, who were acting for the Bank. As a result of the correspondence an agreement was reached between the parties whereby an order of court was to be obtained enabling the Bank to sell 28, Cuscaden Road, another order of court was to be obtained enabling the Bank to sell the property at Thomson Rise, the Bank was to sell the property at Thomson Rise and utilise the proceeds of sale for payment to account of the amounts owing to the Bank by the defendant and Dwidaya Trading Company, the Bank was to sell the defendant's shares, and the amount of the monthly instalments to be paid to the Bank by the defendant and Dwidaya Trading Company was to be determined after the realisation of the property at Thomson Rise and all the defendant's shares. The Bank also agreed to withhold selling 28, Cuscaden Road as long as the monthly instalments to be determined as stated in the agreement were paid regularly to the Bank.

I should add that during the course of the correspondence between Messrs. Lee & Lee and Messrs. Donaldson & Burkinshaw instructions were sometimes given to Mr. Selvadurai by Yo on behalf of the defendant. Mr. Selvadurai has stated that the defendant

authorised him to take instructions on her behalf from Yo. Although the defendant has denied this, I accept the evidence of Mr. Selvadurai on this point. Furthermore, there was nothing in the circumstances of this case which debarred Yo from giving instructions to Mr. Selvadurai on behalf of the defendant. Both Yo and the defendant were acting in concert at that stage to save the family house 28, Cuscaden Road.

In due course the Bank filed Originating Summons No. 269 of 1966 against the defendant. This was an application in respect of the land at Thomson Rise and was similar in many respects to Originating Summons No. 185 of 1966.

On September 12, 1966 an order was made by consent in Originating Summons No. 185 of 1966 and on November 10, 1966 an order was made also by consent in Originating Summons No. 269 of 1966. In both matters it was Mr. Selvadurai who was acting for the defendant and who consented to the orders being made.

Mr. Selvadurai has stated that on September 6, 1966 the defendant personally instructed him to consent to orders being made in respect of both properties i.e. 28, Cuscaden Road and the property at Thomson Rise. The defendant has denied that she gave him any such instructions. I accept the evidence of Mr. Selvadurai on this point. I find as a fact that the defendant personally gave him instructions to consent to orders for the sale of both the properties. In my opinion the defendant was not being truthful when she denied that she gave him any such instructions.

In any event, once legal proceedings have been commenced, a solicitor instructed by a party to conduct them on her behalf has, in the absence of instructions to the contrary, an implied authority from the client to compromise them. See *S.N. Mitra* v *S.T. Dasi*[6] and *Halsbury's* Laws Vol. 36 page 78 paragraph 108. There is no evidence of any instructions to the contrary in this case.

It is submitted by counsel for the defendant that the agreement arrived at by the correspondence between the two firms of solicitors was not a concluded agreement because the amount of the monthly instalments had not been determined and was not known. In my opinion an agreement which expressly leaves one or more matters to be determined at a future date can nevertheless be a concluded agreement. In this case the agreement arrived at by the correspondence was in my view a concluded agreement.

It is alleged on behalf of the defendant that in the proceedings in Originating Summons No. 185 of 1966 the Bank concealed from the court the information that the title deeds relating to 28, Cuscaden Road were deposited with the Bank on or about August 15, 1961 to secure the defendant's personal overdraft. As I have already found as a fact that the said title deeds were, with the full knowledge and consent of the defendant, treated as having been deposited with the Bank to secure Dwidaya Trading Company's overdraft, it follows that there was no concealment on the part of the Bank.

One of the claims made by the defendant in Suit No. 1909 of 1967 is that the order of court obtained in Originating Summons No. 185 of 1966 on September 12, 1966 should be set aside. It was held in *Huddersfield Banking Co., Ltd.* v *Henry Lister & Son, Ltd.*[7] that the court has jurisdiction to set aside a consent order upon any ground which invalidates an agreement between the parties. In that case a consent order which had been completed and acted upon, but without affecting the interests of third parties, was set aside by the court upon the ground of common mistake. In the present case I find that no fraud has been practised by any person on the defendant nor has any person used threats, intimidation or undue influence to procure her agreement to the title deeds relating to 28, Cuscaden Road being treated as having been deposited with the Bank to secure Dwidaya Trading Company's overdraft or to obtain her signature to the Confirmation of deposit of title deeds. Neither has there been any common mistake between the Bank and the Defendant or Yo. There is therefore no ground upon which the order made on the September 12, 1966 can be set aside.

Assuming that it can be shown that the facts as found by me cannot be supported by the evidence, and assuming that the Confirmation of deposit of title deeds was not the defendant's document and was wrongfully obtained from her, that Mr. Selvadurai was not instructed by the defendant to consent to the making of the order of court dated the September 12, 1966, that the said Confirmation is void and unenforceable or is security only for the sum of $100,000 and interest thereon, all of which are alleged by the defendant, I am of the opinion that the defendant is estopped or in equity precluded from relying on such allegations or any of them.

The essence of the doctrine of estoppel by representation was stated by Lord Birkenhead in *Maclaine* v. *Gatty*[8] at page 386 as follows: —

> "Where *A* has by his words or conduct justified *B* in believing that a certain state of facts exists, and *B* has acted upon such belief to his prejudice, *A* is not permitted to affirm against *B* that a different state of facts existed at the same time."

In May 1966 the defendant was aware of the Bank's assertion that she had deposited the title deeds relating to 28, Cuscaden Road with the Bank by way of security for Dwidaya Trading Company's account, and of the Bank's intention to apply to court to be considered to be a mortgagee of and to have liberty to sell 28, Cuscaden Road. The defendant nevertheless took no action whatsoever to resist the Bank's application to court or to appeal against or otherwise reverse or set aside or vary the said order of court, but, except on one point, maintained a quiescent attitude while the Bank and their solicitors were acting in reliance upon the said order of court. The one exception was that the defendant instructed Mr. Selvadurai to write to Messrs. Donaldson & Burkinshaw in order to persuade the Bank to agree to an arrangement whereby 28, Cuscaden Road would be saved from being sold. In the letters written by Mr. Selvadurai on behalf of the defendant it was clearly represented to the Bank that the said title deeds had been deposited with the Bank as security for Dwidaya Trading Company's account. In reliance on this representation, *inter alia*, the Bank refrained from pursuing their full legal remedies which they could other-

wise have easily done. Nothing was said or done by the defendant or any other person on her behalf from May 1966 until November 1967 to show the Bank that they were mistaken in thinking that the said title deeds had been deposited with them as security for Dwidaya Trading Company's account. It was not until November 2, 1967 that the defendant swore an affidavit which was filed in Suit No. 1809 of 1967 in which she made certain allegations about the manner in which she had been induced to sign the Confirmation of deposit of title deeds. Before November 2, 1967 the position was that there were in existence the two orders of court and the concluded agreement between the Bank and the defendant whereby the Bank were precluded from selling 28, Cuscaden Road until the property at Thomson Rise and the defendant's shares were sold and there was a failure to pay the monthly instalments which were to be determined. Until November 2, 1967 the representation made by the defendant to the Bank was that the two orders of court were valid and made with her consent.

In the circumstances of this case I am of the opinion, as I have already stated, that the defendant is estopped or in equity precluded from relying on the allegations to which I have earlier referred.

Of the witnesses in this case I found Mr. Tann Wee Tiong, Mr. Selvadurai, Mr. Loke, Mr. Djeng, Mr. Low Sim Chan and Mr. Ng Ling Cheow to be honest in all that they said. Mr. Loke and Mr. Djeng both had a lapse of memory when they said that Yo was present at the time the letter of guarantee dated January 27, 1965 was signed by the defendant. Mr. Loke also forgot what Yo told him about the proposed overdraft and what he himself told Mr. Djeng. However, these two matters do not, in my view, affect the honesty of Mr. Loke and Mr. Djeng. The fact that they were dismissed by the Bank in August 1965 is not a reflection on their character. As for the defendant and Yo, they were both prepared to tell lies whenever it suited them to do so and each of them did tell a number of lies. Subject to what I have said concerning lapses of memory on the part of Mr. Lok and Mr. Mr. Djeng, wherever the testimony of the defendant and Yo differs from or runs contrary to the evidence of the witnesses whom I have just named I accept the evidence of these witnesses.

In my judgment in Suit No. 1809 of 1967, the Bank succeed in their claim under the letter of guarantee dated January 12, 1962 for $200,000 with interest and the letter of guarantee dated January 27, 1965 for $600,000 with interest. There will accordingly be judgment for the Bank for the sum of $800,000 with interest and costs while the defendant's counterclaim is dismissed with costs. The question of interest is referred to the Registrar for ascertainment. The defendant's claim in Suit No. 1909 of 1967 is dismissed with costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Hilborne & Co.*

MARIA CHIA SOOK LAN v. BANK OF CHINA

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) February 19 to 22, 1973]

[Singapore — Civil Appeals Nos. 36 and 37 of 1972]

Banking — Guarantee — Allegation of misrepresentation, undue influence and duress.

Practice and Procedure — Consent order — Agreement between solicitors.

Registration of Deeds — Confirmation of deposit of title deeds — Failure to register — Whether mortgage unenforceable — Evidence Act (Cap. 5), s. 91 and Registration of Deeds Ordinance (Cap. 255), s. 4.

This was an appeal from the decision of Tan Ah Tah J., reported *ante* p. 41. The appellant, *C*, was a customer of the respondent, *B*, and alleged at the trial of the two actions, which were heard together and out of which these consolidated appeals arose, that two guarantees she gave *B* to secure the account of her husband, *Y*, with *B* were not enforceable against her, because one had been obtained by misrepresentation, and the other by undue influence and duress.

C further alleged at the trial that a confirmation in writing that the title deeds to her property at Cuscaden Road had been deposited with *B* to secure *Y's* indebtedness to *B* had been procured by *B's* fraudulent misrepresentation, duress and/or undue influence, and *C* also raised a plea of *non est factum*.

C further alleged that an agreement arrived at between her solicitors and *B's* solicitors, which was subsequently given effect to by two consent orders of court whereby property of *C* at Thomson Rise and *C's* shares would be sold before the land at Cuscaden Road, was not a concluded agreement, because a material term as to payment by instalments had been left open, and that the orders had no greater validity than the purported agreement on which they were based, that she never authorised her solicitors to come to such arrangement nor to consent to the orders, and that she was unaware that such orders were being made, and they should be set aside.

C further contended that the confirmation of deposit of the title deeds of her property at Cuscaden Road was inadmissible, and the mortgage unenforceable for non-registration under section 4 Registration of Deeds Ordinance, (Cap. 255) and that oral evidence of the intention to create an equitable security could not be given by reason of section 91, Evidence Act, (Cap. 5).

The learned trial judge found *C* and *Y* to be untruthful, accepted the evidence of *B's* witnesses and rejected *C's* allegations, and held that the confirmation of deposit of title deeds was admissible, even though not registered because it evidenced a pre-existing agreement that the title deeds to the Cuscaden Road property were deposited by way of security for *Y's* indebtedness to *B*.

Held: dismissing the appeals: (1) the learned trial judge had the advantage of hearing the witnesses and the issues were primarily questions of fact, the determination of which depended almost entirely on the credibility of *C* and her witnesses and of the solicitors who had acted from time to time for *C*, and there was no ground for reversing the learned trial judge's findings of fact (*Onassis & Anor.* v. *Vergottis*[1] applied);

(2) *C* had failed to discharge the burden on her of establishing undue influence, *non est factum* and misrepresentation;

(3) there was a concluded agreement between *B* and *C* through their respective solicitors notwithstanding that the amounts of the instalments were left open pending the sale of the Thomson Rise property, and the consent orders should not be set aside;

(4) it was unnecessary to deal with the allegation based on section 4 of the Registration of Deeds Ordinance in view of the consent order, but *(obiter)* in any event the court considered itself bound by *Kasmeerah* v. *Hadjee Mohamed Taib.*

Cases referred to:-

(1) *Onassis & Anor.* v. *Vergottis* [1968] 2 Ll. Rep. 421.

(2) *Williams* v. *Bayley* (1866) L.R. 1 H.L. 200.

(3) *Hontestroom (Owners)* v. *Sagaporack (Owners)* [1927] A.C. 37.